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16 *Attorneys for Plaintiffs and*
17 *The Class Members*

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 MONTE RUSSELL, on behalf of himself and
16 others similarly situated,

17 Plaintiff,

18 v.

19 WELLS FARGO AND COMPANY,
20

21 Defendant.

Case No. C-07-3993-CW

**DECLARATION OF T. JOSEPH
SNODGRASS IN SUPPORT OF
PLAINTIFF'S MEMORANDUM IN
SUPPORT TO STRIKE AND
INVALIDATE DEFENDANT'S RULE 68
OFFERS**

1 I, T. Joseph Snodgrass, declare:

2 1. I am a partner with the firm Larson · King, LLP, counsel for the Plaintiff, Monte
3 Russell, and others similarly situated. I am an attorney licensed to practice in the State of
4 Minnesota and my admission to practice in the Northern District of California on a pro hac vice
5 basis was granted on August 17, 2007. I have personal knowledge of the matters stated herein
6 and if called as a witness, I could and would competently testify to the following:

7 2. On September 3, 2008, but prior to Plaintiffs' counsel's receipt of Wells Fargo's
8 September 2, 2008 Rule 68 offers to Randal Scott, Patrick Moschelle, and Kevin Casner, the
9 parties met and conferred concerning Wells Fargo's written responses to Plaintiffs' first set of
10 discovery requests. During the parties' meet-and-confer, I requested that Wells Fargo produce
11 the internal hours-survey forms that it contends certain members of the collective action class
12 completed and returned to Wells Fargo during their employment with the company. Wells
13 Fargo's attorneys agreed to produce the surveys at issue but did not give me a date certain by
14 which Plaintiffs' counsel would receive the documents.

15 3. In this case, the parties have not exchanged Rule 26(a) disclosures and, to date,
16 Wells Fargo has not produced a single document in response to formal document requests served
17 upon Wells Fargo last year.

18 4. In addition, Wells Fargo's statements concerning the non-existence of time record
19 documents are in direct conflict with the statements of the attorneys in the Rule 68 offer of
20 judgment to Susette Walsh.

21 5. In addition, after discussions with my clients, I have a good faith belief that other
22 documents and electronic data currently in Wells Fargo's possession will bear directly on the
23 evaluation of each of the offers of judgment currently outstanding.

24 6. I have represented thousands of employees in FLSA and class action wage and
25 hour cases throughout the United States. At this stage of the litigation, without the production of
26 documents and information, I cannot adequately advise the Court or my clients as to the
27 sufficiency of any individual lump sum FLSA offer. I believe that the use of Rule 68 offers at
28 this stage of the litigation, at the same time Wells Fargo is refusing and delaying production of

documents, is grossly unfair to my clients.

7. Attached hereto as Exhibit A is a true and correct copy of the Certificate of Service for Plaintiff's First Set of Requests for the Production of Documents;

8. Attached hereto as Exhibit B is a true and correct copy of the letter from Glenn L. Briggs to Kelly A. Swanson, dated July 21, 2008;

9. Attached hereto as Exhibit C is a true and correct copy of the letter from Joseph Snodgrass to Glenn Briggs, dated October 18, 2007;

10. Attached hereto as Exhibit D is a true and correct copy of the letter from Joseph Snodgrass to Theresa Kading, dated January 3, 2008;

11. Attached hereto as Exhibit E is a true and correct copy of the e-mail from Theresa Kading to Kelly Swanson, dated June 11, 2008;

12. Attached hereto as Exhibit F is a true and correct copy of the e-mail from Theresa Kading to Kelly Swanson, dated June 17, 2008;

13. Attached hereto as Exhibit G is a true and correct copy of the letter from Joseph Snodgrass to Glenn Briggs, dated June 27, 2008;

14. Attached hereto as Exhibit H is a true and correct copy of the letter from Glenn Briggs to Joseph Snodgrass, dated August 22, 2008;

15. Attached hereto as Exhibit I is a true and correct copy of the letter from Theresa Kading to Joseph Snodgrass, dated August 26, 2008;

16. Attached hereto as Exhibit J is a true and correct copy of Defendant's second Rule 68 offer of judgment to Ms. Walsh, dated August 29, 2008;

17. Attached hereto as Exhibit K is a true and correct copy of Defendant's Rule 68 offer of judgment to Mr. Scott, dated September 2, 2008;

18. Attached hereto as Exhibit L is a true and correct copy of Defendant's Rule 68 offer of judgment to Mr. Casner, dated September 2, 2008;

19. Attached hereto as Exhibit M is a true and correct copy of Defendant's Rule 68 offer of judgment to Mr. Mochelle, dated September 2, 2008;

20. Attached hereto as Exhibit N is a true and correct copy of the letter from Glenn Briggs to Joseph Snodgrass, dated September 5, 2008;

21. Attached hereto as Exhibit O is a true and correct copy of the following unpublished cases:

Lee v. The Timberland Co., No. 07-2367, 2008 WL 2492295 (N.D. Cal. June 19, 2008);

Yue Zhou v. Wang's Restaurant, No. 05-0279, 2007 WL 2298046 (N.D. Cal. Aug. 8, 2007);

Luna v. Del Monte Fresh Produce (Southeast), Inc., 1:06-cv-2000, 2008 WL 754452 (N.D. Ga. Mar. 19, 2008);

Wang v. Chinese Dailey News, Inc., No. 04-1498, 2006 WL 1635423 (C.D. Cal. May 6, 2006);

Christian v. R. Wood Motors, Inc., No. No. 91-CV-1348, 1995 WL 238981 (N.D.N.Y. Apr. 21, 1995);

Sjoblom v. Charter Communications, LLC, 3:07-cv-0451, 2007 WL 5314916 (W.D. Wis. Dec. 26, 2007);

Geer v. Challenge Fin. Investors Corp., No. 05-1109, 2006 WL 704933 (D. Kan. Mar. 14, 2006);

Guerra v. Big Johnson Concrete Pumping Inc., No. 05-14237, 2006 WL 2290517 (S.D. Fla. June 28, 2008);

Reyes v. Carnival Corp., No. 04-21861, 2005 WL 4891058 (S.D. Fla. May 25, 2005);

Mares v. Caesars Entertainment, Inc., No. 4:06-cv-0060, 2007 WL 118877 (S.D. Ind. Jan. 10, 2007);

Bretana v. International Collection Corp., No. 07-5934, 2008 WL 2264555 (N.D. Cal. June 2, 2008);

Strausser v. ACB Receivables Mgmt., No. A 06 5109, 2007 WL 512789 (E.D. Pa. Feb. 12, 2007);

1 *Ladegaard v. Hard Rock Concrete Cutters, Inc.*, No. 00-5755, 2001 WL 1403007
2 (N.D. Ill. Nov. 9, 2001);
3 *Reed v. TJX Companies, Inc.*, No. 04 C 1247, 2004 WL 2415055 (N.D. Ill. Oct.
4 27, 2007);
5 *Taylor v. CompUSA, Inc.*, No. 04-718, 2004 WL 1660939 (N.D. Ga. June 29,
6 2004);
7 *Gibson v. Aman Collection Serv.*, No. 00-1798, 2001 WL 849525 (S.D. Ind. July
8 23, 2001);
9 *Mushroom Assocs. v. Monterey Mushrooms, Inc.*, No. 91-1092, 1992 WL 442898
10 (N.D. Cal. Aug. 21, 1992).

11 I declare under penalty of perjury of the laws of the United States of America and the
12 State of California that the foregoing is true and correct to the best of my knowledge.

13 Executed this 11th day of September 2008, at Saint Paul, Minnesota.

14 Dated: September 11, 2008 /s/ T. Joseph Snodgrass
15 T. Joseph Snodgrass

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